A.F.R.

(56)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

WRIT PETITION NO. 2241 OF 2006

PETITIONERS:

1. Devki Khatri, aged about 36 year, Wife of Shri Suresh Khatri, Resident of Ward No. 5, Veer Savarkar Ward (Gandhi Nagar), Ambikapur, District Surguja (C.G.).

2. Khristina Toppo, aged about 45 years, Wife of Shri Baldeo Toppo, Resident of Ward No. 21, Bal Gangadhar Tilak, Dhobipara, Ambikapur, District Surguja (C.G.).

3. Urmila Das, aged about 30 years, Wife of Shri Narayan Das, Resident of Raidas Ward, Ambikapur, District Surguja (C.G.).

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through : The Secretary, Department of Women and Child Development, D.K.S. Bhawan Raipur (C.G.).

2 The Collector, District Surguja Ambikapur (C.G.).

3. The Commissioner, Municipal Corporation, Ambikapur, District Surguja (C.G.).

4. The District Women and Child Development, Ambikapur, District Surguja (C.G.).

5. The District Programme Officer, Women and Child Development Officer, Ambikapur, District Surguja (C.G.).

6. The Union of India, through the Secretary, Ministry of Women and Child Welfare, New Delhi.

Present: Smt Hamida Siddique, learned counsel for the petitioners.

Shri Prashant Mishra, learned Additional A.G. with Shri Utkarsh Verma, learned Dy. G.A. for the State/respondents.

ORAL ORDER
(Passed on 03rd May, 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ :

The petitioners are working as Sanghathika/Sahayika under a Scheme called "Special Nutrition Diet Distribution Scheme" (for short "the Scheme"), at the Special Nutrition Diet Distribution Centre, Ambikapur, District Surguja. This Scheme is evolved by the Women and Child Development Department, Government of Chhattisgarh. It is stated that the petitioners have been working as Sanghathika/Sahayika for more than a decade. The Government of Chhattisgarh has decided to close down the said Scheme. It is stated that in order to help the Sanghathika/Sahayika who worked under the Scheme, the Secretary, Women and Child Development Department, Government of Chhattisgarh has issued a circular dated 10-04-2006 containing instructions/guidelines providing for preference to those Sanghathika/Sahayika who have been working under the Scheme in the matter of appointment as Anganbadi worker/Assistant under the new set of rules. This writ petition is filed by some of the Sanghathikas/Sahayikas complaining that a Sanghathika/Sahayika in order to qualify himself or herself to the post of Anganbadi worker/Assistant he or she should be a matriculate, if appointment is sought in urban area and that prescription is arbitrary, unreasonable and violative of Article 14 of the Constitution of India. It is also complained that the Government having taken a decision to provide preference to Sanghathikas/Sahayikas who

have been working under the Scheme in the matter of appointment to the post of Anganbadi worker/Assistant, ought not to have imposed the condition that a candidate should be matriculate in order to qualify himself/herself to the post of Anganbadi worker/Assistant.

(2) Having heard learned counsel for the petitioners and learned Additional Advocate General, we are of the considered opinion that there exist no grounds which could persuade us to step in under Article 226 of the Constitution and interfere with the qualification prescribed by the Department that a candidate for the post of Anganbadi worker/Assistant in urban area should be a matriculate. At the threshold, it needs to be noticed that but for the Circular issued by the Secretary, Women and Child Department, Government of Chhattisgarh providing for preference in the matter of appointment to the post of Anganbadi worker/Assistant, the petitioners and similarly circumstanced others who have been working as Sanghathikas/Sahayikas under the Scheme ought not to have claimed even preference in the matter of appointment. It also needs to be noticed at the threshold that the petitioners and similarly circumstanced other Sanghathikas/Sahayikas were appointed when the Scheme was in currency and their appointment was co-terminous with the term of the Scheme itself. Since the Scheme has been abolished, the petitioners and similarly circumstanced others do not have any existing enforceable right to insist that the Government should frame the rules in such a way as to absorb all Sanghathikas/Sahayikas who worked under the Scheme. Thirdly, it needs to be noticed that prescription of qualification for any post squarely falls within the domain of the Executive / Appointing Authority and it is not for the Court to prescribe the qualification as settled in number of pronouncements of the Supreme Court and the High Courts. The limited

scope of judicial review of qualifications prescribed by the State employer is to see whether any particular qualification is so absurd or irrational so as to attract wrath of Article 14 postulates. The qualification prescribed for a candidate in order to qualify himself / herself to the post of Anganbadi worker/Assistant in urban area cannot be condemned on any rational test as being totally irrelevant to the object to be achieved. We also do not agree with the learned counsel for the petitioners that the new set of rules apply only to the post of Anganbadi workers/Assistants in urban areas. If that is so, as could be seen from a translated copy of Annexure P-1which is placed before us at the time of hearing, the rules themselves provide for appointment of both matriculates and non-matriculates. The rule has prescribed different pay in the form of honorarium to the matriculates and non-matriculates. Above all, if the above contention of the learned counsel is true, then, there was no need to prescribe in Annexure P-1, that in urban area it is compulsory that the Anganbadi worker should be a matriculate. The sum and substance of the circular issued by the Secretary, Women and Child Development Department and new set of rules would go to show that though the preference is provided to all those who have been working as Sanghathika/Sahayika under the Scheme, they should first qualify themselves to be considered in terms of the qualifications prescribed under the new set of rules. Only those Sanghathikas/Sahayikas who possess the prescribed qualifications under the new set of rules contained in Annexure P-1 could claim preference in terms of the circular and not otherwise.

(3) In the result, we do not find any ground to interfere. The writ petition is, therefore, dismissed. This order, however, shall not come in the way of the Government considering the representations made by the petitioners and similarly circumstanced others requesting for their absorption in the

State service which representations are said to be pending before the concerned Authorities, favourably.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Subby